

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.,  
SUCCESSOR BY MERGER TO BAC  
HOME LOANS SERVICING, LP, F/K/A  
COUNTRYWIDE HOME LOANS  
SERVICING, LP,  
Appellant,  
vs.  
TIM RADECKI, AN INDIVIDUAL,  
Respondent.

No. 75334-COA

FILED

MAR 18 2011

ELIZABETH A. DEPTON  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Bank of America, N.A., appeals from a district court order granting summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The original owner of the subject property failed to make periodic payments to its homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien, and, later, a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Bank of America tendered payment to the HOA foreclosure agent for an amount equal to nine months of past due assessments, but the HOA agent rejected the payment. The HOA then proceeded with its foreclosure sale.

Radecki purchased the subject property at the HOA foreclosure sale, and then filed an action for quiet title, asserting that the foreclosure sale extinguished Bank of America's deed of trust encumbering the subject property. The parties then filed cross motions for summary judgment. The district court ruled in favor of Radecki, finding that Radecki was a bona fide purchaser, Bank of America's tender did not extinguish the HOA's

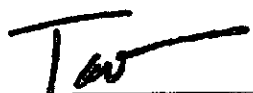
superpriority lien, and Bank of America failed to preserve its interest after its tender was rejected. Thus, the district court held that Radecki took the property free of Bank of America's first deed of trust. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.


Applying *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. \_\_\_, 427 P.3d 113 (2018), to the instant case, we conclude the district court was incorrect in granting summary judgment to Radecki. Notably, Radecki's status as a bona fide purchaser is irrelevant under this decision if proper tender of the superpriority lien amount was made, as that would render any foreclosure on the superpriority amount void. *See Bank of Am.*, 134 Nev. at \_\_\_, 427 P.3d at 121 (noting that a party's bona fide purchaser status is irrelevant when a defect in the foreclosure renders the sale void); *cf. Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 366 P.3d 1105 (2016) (discussing the balance of equities for a bona fide purchaser in a quiet title action following an HOA foreclosure sale). And under *Bank of America*, the first deed of trust holder is not required to record its tender or take any action to preserve its tender for the tender to effectively eliminate the superpriority lien. *See Bank of Am.*, 134 Nev. at \_\_\_, 427 P.3d at 120.

Without *Bank of America* for guidance, however, the district court failed to properly consider the full circumstances regarding Bank of America's tender in this case, specifically the HOA's grounds for rejecting the tender, which impact genuine issues of material fact in this matter. See *Wood*, 121 Nev. at 729, 121 P.3d at 1029; see also *Bank of Am.*, 134 Nev. at \_\_\_, 427 P.3d at 118-19. As a result, we reverse the district court's summary judgment in favor of Radecki and remand this matter back to the district court for proceedings consistent with this order.<sup>1</sup>

It is so ORDERED.

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Villani, District Judge  
Akerman LLP/Las Vegas  
The Wright Law Group  
Eighth District Court Clerk

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<sup>1</sup>Based on our decision above, we do not need to address the commercial reasonableness of the sale or the parties' other arguments.